

## **Part II**

### **United States Response to Recommendations by the Committee on the Rights of the Child in its Concluding Observations Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography**

The United States appreciates the Committee's comments on positive aspects of U.S. implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. We have considered all of the Committee's recommendations included in the Committee's Concluding Observations, June 25, 2008 (CRC/C/OPSC/USA/CO/1) (Committee's Concluding Observations) and appreciate the opportunity to transmit our responses in Part II.

As a preliminary matter, the United States appreciates the ongoing dialogue with the Committee on the issues identified in the Committee's Concluding Observations. Many of these issues are also covered in the Committee's Revised Guidelines Regarding Initial Reports, CRC/C/OPAC/22 (Guidelines), which guided U.S. preparation of its Periodic Report, included as Part I of this submission. Rather than repeating material provided in the Periodic Report in those instances, the United States has provided a brief response here, with cross-references to further information on the relevant topic in the Periodic Report. For issues not addressed in the Periodic Report, Part II provides a full response.

#### **Committee Recommendation ¶ 9:**

**“9. The Committee recommends that the State party consider developing and implementing a comprehensive and systematic mechanism of data collection, analysis and monitoring on all the issues covered by the Protocol. The data should be disaggregated, inter alia, by the nature of the offence and by age, sex, ethnicity, socio-economic status and geographical location. The coverage of data collection and studies should include all of mainland United States as well as the insular areas and other dependent areas over which the United States exercises sovereignty. The Committee also recommends that the State party consider using, in the development of programmes and activities in all the areas covered by the Optional Protocol, the definitions used therein or contained in other**

**international standards to which the State party has adhered.”**

#### **U.S. Response to ¶ 9:**

The United States has provided extensive data in response to the Committee's Guidelines throughout its Periodic Report, included as Part I of this submission, in particular in Section II. Collection of data is necessarily more complicated for the United States because of its federal system. Nevertheless, the National Strategy on trafficking in persons discussed in response to the Committee's Recommendation in ¶ 11 below will address many of the issues relevant to the Optional Protocol.

For U.S. states and territories, the United States has provided information in Section V of the Periodic Report on such key issues as the relevant criminal laws of U.S. states, the District of Columbia, and territories.

As to the Committee's comment on definitions, the United States generally relies on definitions in the Optional Protocol and other relevant international instruments that represent international obligations agreed to by the United States. *See also* U.S. response to ¶ 33 below.

**Committee Recommendation ¶ 11:**

**“11. The Committee recommends that the State party develop a National Plan of Action aimed at addressing comprehensively all the issues covered by the Optional Protocol and provide adequate human and financial resources for its implementation.”**

**U.S. Response to ¶ 11:**

The Department of Justice is developing a National Strategy for Child Exploitation Prevention and Interdiction to further this critical goal, consistent with the Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (PROTECT Our Children Act of 2008), Public Law No. 110-401. The National Strategy will establish long-range goals for preventing child exploitation, including annual objectives for measuring the Government's progress in meeting those goals. Currently, as the Committee recognizes, the United States has extensive programs to combat trafficking in persons, including children, which exist for both cross-border and domestic trafficking. As discussed in ¶ 11 of the Periodic Report, the wide-reaching U.S. implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol) addressing prevention and punishment of trafficking of children for exploitation, including for sexual exploitation and forced labor, and assistance for victims largely overlap with U.S. obligations under the Optional Protocol.

**Committee Recommendation ¶ 13:**

**“13. The Committee recommends that the State party strengthen coordination among the different agencies and governmental departments working in the areas covered by the Optional Protocol, both at federal and state levels. The State party is also encouraged to strengthen the coordination with nongovernmental organizations in the implementation and evaluation of the Optional Protocol.”**

**U.S. Response to ¶ 13:**

As discussed in Section III.B. of the Periodic Report, the United States relies on extensive coordination among federal executive branch agencies and between federal and state governmental entities to implement its obligations under the Optional Protocol. Many of these programs include significant participation by non-governmental entities such as the National Center for Missing and Exploited Children. In preparing its Periodic Report, the United States sought input from interested non-governmental entities, including holding two meetings with representatives of interested organizations.

## **Committee Recommendation ¶ 15:**

**“15. The Committee recommends that the State party:**

- (a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups, including law enforcement personnel, judges, lawyers, social and health-care workers, immigration and customs officers, religious and community leaders, civil society organization organizations accredited for adoption;**
- (b) Strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, by using school curricula and appropriate material specifically for children;**
- (c) Promote, in cooperation with civil society and the media—in line with article 9, paragraph 2, of the Optional Protocol—awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of all the offences referred to in the Optional Protocol, including by translating into appropriate languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in accessing such information, education and training programmes.”**

## **U.S. Response to ¶ 15:**

The United States continues to develop its extensive training and public awareness activities related to the Optional Protocol both in the United States and abroad. *See* Sections III.C., IV.C. and VII.A. of the Periodic Report. U.S. programs to provide service benefits to victims offer multiple examples of the crucial role of community participants in public awareness and the actual provision of the benefits, as discussed in Section VI.G. of the Periodic Report.

As discussed in response to the Committee’s Recommendations in ¶¶ 45 and 46, the United States has launched a new effort to increase awareness of the importance of its obligations under the Optional Protocol.

As to school curricula specifically, Section IV.C.5. of the U.S. Periodic Report provides information disseminated by the Department of Education to promote attention to protecting school children from the offenses in the Optional Protocol. The goal of these efforts is to raise awareness among teachers, principals, guidance counselors, and others who are in daily contact with children in the school system. Efforts actually undertaken by the school systems are, however, a matter of state and local prerogative in the U.S. federal system. The National Center for Missing and Exploited Children and the Boys and Girls Clubs of America provide extensive resources for school children on the crucial issue of internet safety through NetSmartz.org. Online resources are available for teenage children at [www.netsmartz.org/netteens.htm](http://www.netsmartz.org/netteens.htm) and for younger children at [www.netsmartzkids.org/indexFL.htm](http://www.netsmartzkids.org/indexFL.htm).

**Committee Recommendation ¶ 17:**

**“17. The Committee recommends that the State party:**

- (a) Provide more information in the next report on the budget allocations for the implementation of the Optional Protocol, in particular those addressed to services for child victims of the offences covered by the Protocol;**
- (b) Provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention of the offences, protection and rehabilitation of child victims and prosecution of the perpetrators of all the offences covered by the Protocol;**
- (c) Adopt a human rights approach to its budgeting with particular focus on children.”**

**U.S. Response to ¶ 17:**

The United States has provided available information on funds budgeted to activities covered by the Optional Protocol in Section III.E. of the Periodic Report.

**Committee Recommendation ¶ 19:**

**“19. The Committee recommends that the federal and state governments consider the creation of human rights institutions in accordance with the Paris Principles to monitor and promote the Optional Protocol. These institutions should be provided with the necessary human and financial resources to carry out their mandates.”**

**U.S. Response to ¶ 19:**

U.S. mechanisms for human rights enforcement and relevant institutions are discussed in Section III.G. of the U.S. Periodic Report. The United States hopes that the Committee will consider the effect of the tight network of agencies and offices dedicated to ensuring the protections of all human rights which the United States believes achieves the results sought by the Committee.

The United States has again reviewed the Paris Principles, “Principles relating to the status of national institutions,” annexed to UN General Assembly Resolution 48/134. This review has confirmed the U.S. view that it has many ways of ensuring compliance with its human rights obligations, within the federal government, in state governments, and with NGOs and other members of civil society, without a national human rights institution per se. The United States notes in this regard that the General Assembly “welcome[d]” the Principles and “encourage[d]” the establishment of national institutions but did not purport to mandate their creation.

**Committee Recommendation ¶ 21:**

**“21. The Committee is of the view that the elimination of the sale of children, child prostitution and child pornography would be facilitated by adopting a holistic approach, addressing the contributing factors thereto, and recommends that the State party strengthen its efforts to address the root causes, such as poverty and marginalization, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism. Particular attention in the preventive efforts should be given to protect children throughout the State party who are especially vulnerable to such practices.”**

**U.S. Response to ¶ 21:**

The United States believes that the information provided throughout the Periodic Report will relieve the concerns indicated by the Committee as to the focus of the United States on sale of children, child prostitution and child pornography. The United States shares the Committee’s view of the importance of preventing the offenses covered in the Optional Protocol. To that end, the United States has made extensive efforts to address the root causes contributing to the vulnerability of children to the offenses covered by the Optional Protocol. U.S. efforts to prevent these offenses and protect children, including those who are most vulnerable due to poverty, marginalization, and other factors, are discussed in particular in Sections IV. B. and VII. B. of the U.S. Periodic Report.

**Committee Recommendation ¶ 23:**

**“23. The Committee recommends that demand for sexual services involving the exploitation of children be addressed through both prevention and prosecution measures. Preventive measures should include, among others, public awareness campaigns aimed at the individuals and groups creating demand for sexual exploitation of children.”**

**U.S. Response to ¶ 23:**

Reduction in demand is indeed a crucial element of preventing the occurrence of the offenses covered by the Optional Protocol. The United States has taken extensive efforts to address demand, including those discussed in Section IV.A. of the U.S. Periodic Report.

**Committee Recommendation ¶ 25:**

**“25. The Committee recommends that the State party continue to combat child prostitution, both involving foreign children trafficked into the country and “internal” child prostitution. To this end, the Committee recommends, inter alia, that the State party monitor enforcement and implementation of child prostitution laws at the state level and consider increasing human and financial resources for protection programmes, including awareness campaigns and training.”**

### **U.S. Response to ¶ 25:**

The United States agrees with the Committee that combating child prostitution and providing assistance to victims must be and is a high priority. The Periodic Report demonstrates the U.S. commitment in this regard. Section II.A. of the U.S. Periodic Report discusses the available information on the incidence of child prostitution and pornography in the United States and the fact that the United States is taking steps to increase reliable data by funding a national prevalence study with two primary questions: how many youth under 18 were victims of commercial sexual exploitation in 2008 in the United States, and how many of the victims were known to law enforcement? The first *Biennial Comprehensive Research and Statistical Review and Analysis of Severe forms of Trafficking, Sex Trafficking and Unlawful Commercial Sex Acts in the United States*, prepared by the National Institute of Justice in the U.S. Department of Justice Bureau of Justice Statistics is attached to this submission as Annex 2.

As discussed in Sections III.B. and V.G. of the U.S. Periodic Report, the federal government works with state governments through task forces and grants to support enforcement and implementation of laws relevant to all of the offenses in the Optional Protocol, many of which focus on issues related to child prostitution.

Protection programs, including awareness campaigns, are discussed in Sections IV.C. and VI. of the U.S. Periodic Report. The United States continues to pursue increased funding to achieve greater awareness and broader training opportunities.

### **Committee Recommendation ¶ 27:**

**“27. The Committee recommends that the State party**

- (a) Improve enforcement of the existing legislative framework on child pornography;**
- (b) Intensify its efforts to take the necessary measures to address the rapidly changing nature of technology;**
- (c) Strengthen its measures to identify and assist child victims of child pornography;**
- (d) Continue to strengthen international cooperation to prevent and punish child pornography.”**

### **U.S. Response to ¶ 27:**

The United States is working hard to reduce its role as producer and consumer of child pornography and to combat the rise in cyber-crimes involving children, including pornography. By way of example, law enforcement programs such as Project Safe Childhood, Internet Crimes Against Children task forces, the Innocence Lost Initiative, and Operation Predator under the Cyber Crimes Center of the Department Homeland Security all focus on internet crimes, many specifically those dealing with children. Operation Joint Hammer and the Virtual Global Task Force are but two examples of international cooperation in fighting internet crimes. The existing

criminal laws on child pornography are set forth in Section V.C. of the U.S. Periodic Report; enforcement is discussed in Sections III.B., V.G. and VII.A.1., and prevention in Section IV.

As discussed in ¶ 41 of the U.S. Periodic Report, in October 2008 the President signed into law The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (PROTECT Our Children Act of 2008), Public Law No. 110-401, which provides new tools for fighting internet crimes.

The U.S. Department of Justice has a dedicated section of its Criminal Division, the Child Exploitation and Obscenity Section (CEOS), created in 1987, to focus on these issues domestically, and the Department of Homeland Security Immigration and Customs Enforcement (ICE) focuses on the international, trans-border dimension of child exploitation. Both agencies have a heavy emphasis on child pornography. The work of both offices is discussed extensively throughout the U.S. Periodic Report.

#### **Committee Recommendation ¶ 29:**

**“29. The Committee recommends that the State party continue to strengthen its measures to combat sex tourism, including by raising awareness to tackle attitudes, such as the idea that is acceptable to abuse and exploit children living in poverty in foreign countries. The Committee also recommends that the State party take further measures to prevent sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists and cooperating closely with travel operators, media, NGOs and civil society organizations to combat all forms of commercial sexual exploitation of children in travel and tourism.”**

#### **U.S. Response to ¶ 29:**

The United States has a strong record in successfully combating sex tourism as discussed in the Periodic Report in Sections II.B., III.G.; IV.C.; V.B., F., G., L., M.; and VII.A. As noted in ¶ 302 of the Periodic Report, recent legislation has expanded the tools with which U.S. officials can pursue those who engage in sex tourism.

#### **Committee Recommendation ¶ 31:**

**“31. In order to strengthen the safeguards against sale of children for adoption purposes, the Committee recommends that the State party:**

- (a) Adequately and effectively implement the Hague Convention on Inter-Country Adoption in order to curb the instances of sale for adoption purposes;**
- (b) Ensure that not only the accredited agencies, but also the approved persons, pursue only non-profit objectives;**
- (c) Expressly prohibit all forms of possible active solicitation for children, including the payment of pre-natal and other expenses;**

**(d) Intensify its efforts to prevent and punish all the cases of sale of children, notably those occurring via the Internet, irrespective of the purpose of the sale;**

**(e) Seek to ensure that the principle of best interests of the child and the safeguards guaranteed in the Hague Convention are equally respected in case of adoption from countries not parties to the Hague Convention;**

**(f) Effectively apply the principle of subsidiarity as enshrined in Section 303 (a)(1)(B) of the Intercountry Adoption Act of 2000, in order to ensure that American children are primarily adopted in the United States.”**

#### **U.S. Response to ¶ 31:**

Section V.J. of the U.S. Periodic Report provides detailed information on U.S. implementation of its obligations under the Hague Adoption Convention.

a. Paragraphs 262-268 of the Periodic Report specifically address prohibitions on child buying. As explained there, § 404 of the Intercountry Adoption Act criminalizes improper inducement as required by Article 3.1(a)(ii) of the Optional Protocol and consistent with Articles 4.c and 32 of the Hague Adoption Convention.

b. The United States has fully implemented its obligations under the Hague Adoption Convention. The United States believes that its provision for approval of individuals or private for-profit entities should allay the Committee’s stated concern with the role of for-profit persons in the U.S. adoption system; all such persons and entities are required to meet strict standards of performance. The recommendation that the United States ensure that approved persons “pursue only non-profit objectives” is not based on a requirement of the Hague Adoption Convention or the Optional Protocol.

Article 22(1) of the Convention provides that the functions of a Central Authority (which, as defined under the Convention include adoption services) “may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.” The United States agrees that bodies accredited under Chapter III are obligated to comply with the requirement in Article 11 that “an accredited body shall (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation.” Paragraph (2) of Article 22, however, establishes an alternative to paragraph (1), not subject to Chapter III. Paragraph (2) provides that the functions of the Central Authority under Articles 15-21 may be performed, “to the extent permitted by the law and subject to the supervision of the competent authorities of [the] State, *also* by bodies or persons who – (a) meet the requirements of integrity, professional competence, experience and accountability of that State and (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.” (Emphasis added). As the Committee notes in its comments in ¶ 30, this is the provision applicable to approved persons.

As explained in the explanatory report prepared by Rapporteur Gonzalo Parra Aranguren,

Paragraph 2 of Article 22 . . . entitles any Contracting State to declare that the procedural functions assigned to the Central Authority under Articles 15 to 21 may also be performed, but only in that State, by persons or bodies other than the public authorities or bodies accredited according to Chapter III.

Hague Conference on Private International Law, Actes et Documents (Proceedings) of the 17th Session, Tome II, Adoption – Cooperation (1994), at ¶ 378.

Pursuant to Article 22(2), the United States included the following declaration in its instrument of ratification of the Convention:

The United States declares, pursuant to Article 22(2), that in the United States the Central Authority functions under Articles 15-21 may also be performed by bodies or persons meeting the requirements of Articles 22a and b, and 32.<sup>1</sup> In addition, such bodies or persons will be subject to federal law and regulations implementing the Convention as well as state licensing and other laws and regulations applicable to providers of adoption services. The performance of Central Authority functions by such approved adoption service providers would be subject to the supervision of the competent federal and state authorities in the United States.

In keeping with this declaration, § 203 of the Intercountry Adoption Act establishes minimum requirements applicable to both accreditation of agencies and approval of persons, and requires the Secretary of State to issue regulations prescribing “the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the convention.” The minimum requirements established in the regulations are the same for both agencies and persons, including that they be licensed to provide adoption services in at least one state of the United States. For further discussion of these provisions, see Section V.J.3. of the U.S. Periodic Report.

c. The United States prohibits all forms of possible active solicitation for children, as indicated above in its response to Committee Recommendation 31. In ¶ 26 of its Initial Report to the Committee, the United States explained that it had stated, at the final session of negotiations of the Optional Protocol, that it understood the term “improperly inducing consent” to mean knowingly and willfully inducing consent by offering or giving compensation to secure the relinquishment of parental rights. No delegation stated a contrary understanding. The payment of reasonable “medical, hospital, nursing, pharmaceutical, travel, or similar expenses incurred by a mother or her child in connection with the birth or any illness of the child” is permitted under U.S. law, but cannot be used for improperly inducing consent. As discussed in Section V.J.5. of the U.S. Periodic Report, both the Department of State and the Department of Homeland Security have regulations specifically prohibiting child buying. Department of Homeland Security regulations make clear that the consent of the mother can be provided only after the birth of the child, as required by Article 4(c)(4) of the Hague Convention, thus reducing the potential for influence from payment of pre-natal expenses.

d. Sections II.A., IV. and V.A. of the U.S. Periodic Report, among others, discuss U.S. efforts to prevent and punish all cases of sale of children, irrespective of the purpose of the sale. As indicated in response to the Committee’s Recommendation in ¶ 27, the Child Exploitation and Obscenity Section of the Department of Justice Criminal Division actively pursues the enforcement of internet crimes that target children.

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<sup>1</sup> Article 32 of the Convention provides that “(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption. (2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid. (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.”

In response to an additional question from Ms. Rosa María Ortiz, Vice Chair, Committee on the Rights of the Child, U.N. Doc. CRC/C/OPSC/USA/Q/1/Add.2, the United States provided the following information, modified slightly here to address sale by anyone, rather than limited to the focus of the original question on sale by a mother. There is no difference, however, in the applicable laws.

Whether a particular act can be prosecuted by federal or state law would depend on a wide range of circumstances. We can assure the Committee, however, that prohibition and criminal punishment of the sale of children as provided for in the Optional Protocol would be fully covered by U.S. law, including a sale via the internet.

More specifically, federal law prohibits the sale of a child on the internet for adoption where the seller knows that the child will be caused to engage in a commercial sex act (18 U.S.C. § 1591) or will be portrayed in child pornography (18 U.S.C. § 2251A), or where the seller transports the child to be prostituted or for involvement in sexual activity (18 U.S.C. §§ 2423(a) or 2423(b)).

In addition, the federal government may prosecute anyone who sells (or, in the case of 18 U.S.C. § 2251A, attempts to sell) her child over the internet where:

- The seller knows that the child will be caused to engage in a commercial sex act (see 18 U.S.C. § 1591. If the child is under the age of 14, the mandatory minimum sentence for this crime is 15 years; otherwise it is 10 years); or
- The seller knows that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct; or the seller intends to promote the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct (see 18 U.S.C. § 2251A. There is a 30 year mandatory minimum sentence for this crime).

e. Section V.J.12. discusses key aspects of adoptions from countries not parties to the Hague Adoption Convention. While there is no international obligation to extend the safeguards guaranteed in the Convention to such adoptions, the United States takes steps to protect children in all adoptions. Indeed, the United States would like all countries to join the Hague Adoption Convention, and is working together with some countries toward that goal, so that all intercountry adoptions to and from the United States meet Hague Convention standards.

f. Section 303 of the U.S. Intercountry Adoption Act (IAA) sets forth requirements applicable in an adoption under the Adoption Convention involving the emigration of a child residing in the United States to a foreign country. As the Committee notes, this includes the requirement set forth in § 303(a)(1)(B), which requires assurance that the accredited agency or approved person, in accordance with the Convention, “(i) has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents to adopt the child in the United States; and (ii) despite such efforts, has not been able to place the child for adoption in the United States in a timely manner.” These requirements are effectively applied as set forth in §§ 303(a)(2) and (b). Subsection (a)(2) requires the accredited agency or approved person (or in certain circumstances the prospective adoptive parent or parents) to ensure compliance with all §

303 requirements, including § 303(a)(1)(B), and to furnish to the state court with jurisdiction over the case documentation of, among other things, the matters described in § 303(a)(1).

In turn § 303(b) provides that the court shall not enter an order declaring an adoption to be final or granting custody for the purpose of adoption of a child emigrating from the United States unless it (1) has received and verified to the extent it may find necessary – (A) the material described in subsection (a)(2) (including efforts to find prospective adoptive parents to adopt the child in the United States); and (B) satisfactory evidence that the requirements of Articles 4 and 15 through 21 of the Convention have been met; and (2) has determined that the adoptive placement is in the best interests of the child.

The IAA is consistent with Article 4 of the Hague Adoption Convention, which requires that the competent authorities of the State of origin, among other things, “have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests.”

Paragraph 128 of the Explanatory Report on the Hague Abduction Convention commented as follows on this matter:

128. Notwithstanding the express acceptance of the subsidiarity principle, there was consensus that, in certain circumstances, the best interests of the child may require that he or she be placed for adoption abroad, even though there is a family available in the State of origin, for instance, in cases of adoption among relatives, or of a child with a special handicap and he or she cannot adequately be taken care of.

#### **Committee Recommendation ¶ 33:**

**“33. The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party:**

- (a) Define and prohibit child prostitution in accordance with articles 2 and 3 of the Optional Protocol both at federal and state levels;**
- (b) Make all the offences under the Optional Protocol punishable by appropriate penalties that take into account their grave nature, both at federal and state levels;**
- (c) Ensure that attempt to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the Optional Protocol.”**

#### **U.S Response to ¶ 33:**

Section V. of the U.S. Periodic Report provides an extensive discussion of U.S. criminal law applicable to the offenses covered by the Optional Protocol at both the federal and state level

addressing attempts, complicity and participation, and providing information on penalties for violations.

Child prostitution is clearly covered by these statutes consistent with Articles 2 and 3 of the Optional Protocol. As to the Committee's concern that there is no federal law "defining or prohibiting child prostitution per se," 18 U.S.C. § 1591 prohibits recruiting, enticing, harboring, transporting, providing, obtaining, or maintaining a child knowing that the child would be caused to "engage in a commercial sex act." "Commercial sex act" is defined to mean "any sex act, on account of which anything of value is given to or received by any person." The fact that the term "child prostitution" is not used or defined as a matter of federal criminal law does not affect the fact that the statute clearly addresses the activities proscribed under the Optional Protocol.

**Committee Recommendation ¶ 34:**

**"34. The Committee further recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further strengthen the framework for the protection of children's rights."**

**U.S. Response to ¶ 34:**

The Optional Protocol does not require States Parties to be or become States Parties to the Convention on the Rights of the Child. The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

**Committee Recommendation ¶ 36:**

**"36. The Committee, in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, recommends that the State party establish its jurisdiction in all cases listed under article 4. Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Optional Protocol abroad – if it does not extradite him or her to another State party -- even if the country where the offence was committed is not a Party to the Optional Protocol or does not criminalize these acts in its legislation."**

**U.S. Response to ¶ 36:**

As discussed in Section V.L. of the U.S. Periodic Report, in addition to cases covered by special aircraft or special maritime and territorial jurisdiction, U.S. law extends jurisdiction

under a number of statutes relevant to its implementation of the Optional Protocol. As noted in the U.S. Initial Report, the inclusion of jurisdiction by a State party over its nationals as perpetrators or victims outside the United States under Article 4.2 is not mandatory and the United States, unlike some other legal systems, does not routinely do so. Similarly, the requirement to establish jurisdiction over an alleged offender present in a State Party if the State Party refuses to extradite the offender on the basis of nationality is inapplicable to the United States because U.S. nationality is not a grounds for denying extradition.

Nevertheless, in 2008, Public Law No. 110-457 added additional extra-territorial jurisdiction over

any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589 , 1590, or 1591 if—

(1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence. . . ;or

(2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

18 U.S.C. § 1596. The referenced peonage, slavery, and trafficking offenses are discussed in Section V.L. of the U.S. Periodic Report.

#### **Committee Recommendation ¶ 38:**

**“38. The Committee recommends that the State party:**

**(a) Ensure that all persons below the age of 18 victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized at federal or state level. To this end the Committee recommends that the State party ensure that the upper age for protection for child victims is set at 18 years throughout the country;**

**(b) Take all necessary measures to ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the Optional Protocol, the best interests of the child shall be a primary consideration;**

**(c) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at federal and at state levels. The State party should be also guided in this respect by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (see Economic and Social Council resolution 2005/20).”**

#### **U.S. Response to ¶ 38:**

The United States appreciates the Committee's recognition of its efforts in protecting child victims of the offenses covered by the Optional Protocol in the criminal justice system, as further elaborated in Section VI of the U.S. Periodic Report. These actions are, of course, consistent with U.S. obligations under Article 8, paragraph 1, of the Optional Protocol.

As an initial matter, prostitution is not a federal crime in the United States for either adults or children.

The Committee notes its concern that state laws in the United States have not yet uniformly exempted children used in prostitution from arrest and prosecution. Due to our federal system, the U.S. federal government cannot effect changes directly in state criminal laws although it can encourage such efforts. As discussed in ¶¶ 102-103 of the Periodic Report, the state of New York has taken major strides in recent years, including the adoption of the Safe Harbor for Sexually Exploited Youth Act in September 2008. The Children's Studies Center of the City University of New York convened the *Third Child Policy Forum of New York: Implementation and Monitoring of the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography* in February 2009. In an address to the forum, William A. Scarborough, Chairperson of the Standing Committee on Children and Families, New York State Assembly, described the legislation as follows:

[S]exually exploited youth should not be prosecuted under the penal law for acts of prostitution; instead, services should be created to meet the needs of these youths outside of the justice system. Sexually exploited youth deserve the protection and services of the family court, with processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long-term housing services. In a nutshell, this is what we've tried to do.

The Children's Studies Center published the Proceedings of the Third Child Policy Forum, including the text of the Optional Protocol and the Committee's Concluding Observations, available at <http://www.brooklyn.cuny.edu/pub/departments/childrenstudies/>.

Other states have created child ombudsmen or child advocates offices that are also engaged in these issues, as discussed in Section III.G. of the U.S. Periodic Report.

As to the Committee's reference to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the United States joined consensus when the UN Economic and Social Council adopted the Guidelines in Resolution 2005/20. The resolution states that the committee adopted the Guidelines "as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system" and "invite[d] Member States to draw, where appropriate, on the Guidelines in the development of legislation, procedures, policies and practices for children who are victims of crime or witnesses in criminal proceedings." The United States joined consensus on Resolution 2005/20 on the basis of this non-binding language. The United States further notes that the Guidelines rely on the Convention on the Rights of Child, to which the United States is not party. Nevertheless, U.S. actions are fully consistent with the language of the resolution.

#### **Committee Recommendation ¶ 40:**

**“Paragraph 40. The Committee recommends that the State party:**

- (a) Ensure that adequate services are available for all child victims of the offences covered by the Optional Protocol, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol;**
- (b) Ensure that foreign children victims of the offences covered by the Protocol are not deported but rather granted the necessary services aimed at their physical and psychological recovery. When return in the country of origin is considered to be the best option in the interests of the child, an adequate assessment concerning the situation in the countries of origin, including - if possible - the family environment, should be undertaken;**
- (c) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8 (4) of the Optional Protocol;**
- (d) Ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.”**

**U.S. Response to ¶ 40:**

The United States continues to expand and refine benefits available to all child victims of the offenses covered by the Optional Protocol as explained in Section VI.G. of the U.S. Initial Report.

The Committee’s comments in ¶ 39 of its Observations indicate its concern that victims of domestic child sexual exploitation may not have the same services available as child trafficking victims from other countries. As the discussion in Section VI.G.3. indicates, the trafficking legislation took important steps to make benefits available to U.S. victims also be available to foreign victims. The United States recognizes that the resulting focus on benefits for foreign victims has in some cases resulted in greater awareness and delivery of services for those victims. The United States continues its efforts to meet the needs of domestic victims, as demonstrated in Section VI.G.1. and 3. of the U.S. Periodic Report.

The United States has taken significant steps to enable foreign victims of severe forms of trafficking to remain in the United States. The relevant immigration benefits are discussed in Section VI.G.2. of the U.S. Periodic Report.

Training for all persons who work with victims is discussed in Section VI.D. of the Periodic Report.

Criminal and civil remedies providing compensation for damages to victims are discussed in Section VI.G.4. of the U.S. Periodic Report.

**Committee Recommendation ¶ 42:**

**“ Paragraph 42. The Committee recommends that the State party continue to strengthen international cooperation by multilateral, regional and bilateral arrangements, giving due attention to the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, in accordance with the Optional Protocol. These arrangements should always be in the best interest of the child and respect international human rights standards.”**

**U.S. Response to ¶ 42:**

Ongoing U.S. efforts to strengthen international cooperation, undertaken in a manner consistent with its international human rights obligations, are discussed in Section VII. of the U.S. Periodic Report.

**Committee Recommendation ¶ 43:**

**“43. The Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, including interregional programmes, and non-governmental organizations, in the development, implementation and evaluation of measures aimed at an adequate application of the Optional Protocol.”**

**U.S. Response to ¶ 43:**

The United States has a well-documented practice of working with the United Nations on important issues including the implementation of its obligations under the Optional Protocol and to assist other countries with implementation of their obligations under the Optional Protocol. The U.S. Periodic Report, particularly in Section VII.A. and these responses to recommendations are a significant part of that effort.

The United States also maintains ongoing contacts with non-governmental organizations, including through periodic meetings during the preparation of this and other human rights reports.

**Committee Recommendation ¶ 44:**

**“44. The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.”**

**U.S. Response to ¶ 44:**

The discussion of U.S. international assistance and cooperation in Section VII. of the U.S. Periodic Report provides information on U.S. efforts to assist and cooperate with foreign governments in this regard. Section VII.B. specifically speaks to addressing root causes such as poverty, underdevelopment and weak institutional capacity.

**Committee Recommendation ¶ 45:**

**“45. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant government departments and agencies, the Congress, the Senate and to state authorities, for appropriate consideration and further action.”**

**Committee Recommendation ¶ 46:**

**“46. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.”**

**U.S. Response to ¶¶ 45 and 46:**

As discussed in ¶ 124 of the Periodic Report, the U.S. National Security Council has recently distributed a memorandum from the Legal Adviser of the Department of State transmitted links to the U.S. Initial Report on the Optional Protocol, as well as the Committee’s Concluding Observations to all agencies of the federal government, and the Department of State has transmitted similar memoranda conveying such information to the state governors, the governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the mayor of the District of Columbia. The memorandum asked the entities to forward it to Attorneys General and to departments and offices that deal with human rights, civil rights, housing, employment and related issues. To provide access to the public at large and to civil society, the Department of State’s Bureau of Democracy, Human Rights, and Labor posts U.S. treaty reports and related submissions and relevant treaty body’s concluding observations, including those for the Optional Protocol, on its website at [www.state.gov/g/drl/hr/treaties/index.htm](http://www.state.gov/g/drl/hr/treaties/index.htm). Additionally, the United States is taking further steps to ensure broader outreach to all levels of government and the public within the United States regarding the Optional Protocol and other U.S. human rights treaty obligations and reports.